



Southern
Environmental
Law Center

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September 16, 2011

Ms. Audrey Davis
North Carolina Division Office
Federal Highway Administration
310 New Bern Ave
Suite 410
Raleigh, NC 27601

Ms. Elizabeth Herrera-Garrido
FOIA Officer
Eastern Federal Lands Highway Division
21400 Ridgetop Circle
Sterling, VA 20166

Ms. Judi Kane
FOIA/PA Contact
Haim-12/E64-409
Federal Highway Administration
1200 New Jersey Ave, SE
Washington, DC 20590-9898

Mr. Frank Vickers
Tennessee Division Office
Federal Highway Administration
404 BNA Drive
Building 200, Suite 508
Nashville, TN 37217

Re: Request for Public Records Related to Corridor K

Dear Ms. Davis, Ms. Herrera-Garrido, Ms. Kane, and Mr. Vickers,

On behalf of the Southern Appalachian Forest Coalition, the Tennessee Sierra Club, Waysouth, the Western North Carolina Alliance, and The Wilderness Society, the Southern Environmental Law Center ("SELC") requests that the Federal Highway

Administration ("FHWA") furnish copies of the following public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552:

1. All records (whether an original or a copy) within the custody or care of the FHWA, or any of its divisions, employees or consultants, which were generated as a result of, or which in any way relate to Corridor K.
2. All records (whether an original or a copy) within the custody or care of the FHWA, or any of its divisions, employees or consultants, which were generated as a result of, or which in any way relate to the following projects:
 - a. Federal project no. NHF-74(22)
 - b. Project No. 8.3019122
 - c. F.A. Project APD-12-1(22)
 - d. The project described in the 1983 North Carolina Department of Transportation Environmental Impact Statement coded FHWA-NC-EIS-78-09-F
 - e. Proposed US 19 from the Andrews bypass to .3 miles West of the Little Tennessee River
 - f. North Carolina Department of Transportation - Transportation Improvement Program Project No. A-9
 - g. Federal project no. APD-NHE-40(15)
 - h. PIN # 102420.00
 - i. SR 40 (US 64) from West of the Ocoee River to SR 68 near Ducktown.
3. All records (whether an original or a copy) within the custody or care of the FHWA, or any of its divisions, employees or consultants, which relate to design or engineering standards for the Appalachian Development Highway System ("ADHS").
4. All records (whether an original or a copy) within the custody or care of the FHWA, or any of its divisions, employees or consultants, which were generated as a result of, or which in any way relate to funding for the ADHS. This request includes, but is not limited to, records relating to
 - a. Documents showing federal funds spent to date on the projects described in number 2 above and the sources of those funds.
 - b. Documents showing federal funds currently obligated to the projects described in number 2 above, the sources of those funds, and the expiration dates of any obligations.

- c. Documents showing federal funds allocated, designated, earmarked, or otherwise available for, but not obligated to, the projects described in number 2 above, the sources of those funds, and any expiration dates of their availability.
- d. All documents explaining how Appalachian Resource Commission ("ARC") ADHS funding is allocated, by North Carolina Department of Transportation, Tennessee Department of Transportation, FHWA, or ARC, among projects.
- e. All documents discussing or otherwise relating to whether ARC funds designated for the ADHS may be used for maintenance, repair, or improvements to existing roads.

For the purposes of this request, the term "records" includes all written, printed, recorded or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, books, papers, maps, photographs, data, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages, and mail in the possession, custody, or control of FHWA. This request includes, but is not limited to, internal and interagency meeting notes; electronic mail messages (whether sent, received, deleted, etc., including attachments), telephone logs, notes or other records of communications with other federal state agencies, elected officials, or members of the public; and comments submitted by the public and by state and federal agencies. Our request also specifically includes responsive documents and records prepared by, created by, or in the possession, custody, or control of FHWA's agents, contractors, and subcontractors. In addition, we request access to each version of a record or document, whether it is a draft, has been electronically deleted, has attachments, bears annotations, etc. Finally, we request that you produce electronically stored information in its native format, and specifically that you produce electronic mail in ".pst" format. FOIA also requires the release of all reasonably segregable portions of documents that are themselves not exempt. 5 U.S.C. § 552(b).

If any portion of this request is denied, SELC requests a detailed statement of the reasons for the withholding, and an index or similar statement of the nature of the materials withheld. In the event of deletions or redactions, we request that a reason be stated for each partial denial of access. Also, please be advised of President Obama's January 21, 2009 FOIA Memorandum, stating that "all agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government."

We request that you waive any search and duplication fees and provide the requested records without charge, or at a reduced charge, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). The disclosure of the requested materials would be in the public interest because it is likely to contribute significantly to public understanding of FHWA's activities and the Corridor K project and is not in our clients' commercial interest. The Southern Appalachian Forest Coalition, the Tennessee Sierra Club, Waysouth, the

Western North Carolina Alliance, and The Wilderness Society intend to disseminate significant information produced in response to this record request to the general public. Several of these organizations, and SELC, which serves as legal counsel for each of these organizations, maintain webpages where they disseminate information to their members and to the general public relating to their program work. See <http://tennessee.sierraclub.org/index.aspx>; <http://www.wayssouth.org/>; <http://wilderness.org/>; <http://www.wnca.org/portal1/>; SAFC???? WaysSouth in particular has a special website devoted to Corridor K issues. See <http://www.wayssouth.org/campaigns/corridor-k/>. Information on these webpages is available to the public free of charge.

Each of these organizations intends to review records produced in response to this request to identify significant information which it will then disclose to the general public through publications, interviews with the media, or informational public meetings. Similarly, each of these organizations intends to disseminate significant information produced in response to this record request to the general public through its website. For these reasons, a fee waiver clearly will benefit the general public through increased awareness and understanding of the operations of the government and of potential or proposed major policy initiatives.

Courts have recognized that Congress intended FOIA's fee-waiver provision to be "liberally construed in favor of waivers for noncommercial requesters." McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987). The Southern Appalachian Forest Coalition, the Tennessee Sierra Club, WaysSouth, the Western North Carolina Alliance, and The Wilderness Society are all 501(c)(3) non-profit organizations working to protect the natural resources of the Southeast and, specifically, to gather, analyze, and disseminate public information about issues related to the conservation of mountains, forests, rivers, streams and wetlands and the protected wildlife and ecosystems of this region. Please let us know whether you need additional information to evaluate this fee-waiver request.

Should our request for reduced or waived fees be denied, we are prepared to bear the reasonable costs necessary to fulfill this request, although we request that you contact us before processing this request to discuss fees and that you provide us an estimate prior to any costs being incurred in excess of \$250. We reserve our rights to appeal a denial of our request for a fee waiver or reduction.

Finally, because the volume of records responsive to our request may be large, we would like to work with your agency to minimize the work necessary to respond. We believe a visit to your offices to review files may be most efficient with respect to any documents that are not available in electronic format. **We will be in Washington DC on November 2-4, 2011 and, if possible, we would like to come to FHWA offices at that time to review documents.** And we can schedule visits to other offices as well. Please feel free to contact Becky Jaffe by telephone at (828) 258-2023 with any questions. We look forward to hearing from you. Thank you very much.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rebecca Jaffe".

Rebecca Jaffe

A handwritten signature in blue ink, appearing to read "Sam Evans".

Sam Evans

Counsel for
Southern Appalachian Forest Coalition
Tennessee Chapter of the Sierra Club
WaysSouth
Western North Carolina Alliance
The Wilderness Society